

Wyoming Judges' Benchbook

Name: Kerri M. Johnson

Court: District

Judicial District: 7B

SCHEDULING CONFERENCES

- Q. How are scheduling conferences set and used in your court? Are they conducted by you? When done by telephone, are the attorneys responsible for setting up a conference call or does your office have enough lines to allow attorneys to call in? If yes, how many lines are available?
- A. Scheduling conferences are upon receipt of a request for setting. Conferences are conducted by me and are used to set the trial date and establish deadlines. Out of town attorneys are allowed to participate by phone. If more than two attorneys are calling in, the attorneys are responsible for setting up the conference call.
- Q. What do you expect from the attorney(s) at the scheduling conference?
- A. At least five (5) days prior to the conference, the parties shall file and serve pretrial memoranda. The contents of the memoranda are included in the Court's notice of setting of initial scheduling and pretrial conference. Generally, the parties should have access to their calendar to set trial date and establish deadlines. Counsel should be able to identify discovery and legal issues.
- Q. Do you use multiple scheduling conferences? Why?
- A. Not usually. I set the initial scheduling conference and then a final pre-trial conference prior to trial. I would consider doing so in appropriate cases.
- Q. Do you use court-directed discovery conferences?
- A. No.
- Q. What are your preferences regarding scheduling/discovery conference orders? Do you require that specific things be included in such orders?

- A. I prepare the order setting the initial scheduling conference and the order following the scheduling conference which includes the trial date, a dispositive motion hearing date, a final pretrial conference date and general deadlines.

PROTOCOL

- Q. What are your thoughts on courtroom protocol?

- A. I expect counsel to follow the Wyoming Rules of Civil and Criminal Procedure, Uniform Rules of District Court and the pertinent statutory authority. I expect professionalism and civility from all participants in the courtroom.

- Q. What things do lawyers do that are particularly helpful?

- A. Cite to authority and make arguments in a clear and concise manner. Responding to motions timely with cogent legal argument is helpful. Diligently prepare and submit orders to the Court.

- Q. What things do lawyers do that are not helpful?

- A. Not responding to motions and then showing up in Court and making arguments that the Court has not had time to review prior to the hearing. Not following rules, especially in family law cases, regarding timely filing witness and exhibit lists.

MOTIONS PRACTICE

- Q. Do you require that submitted motions include a proposed order?

- A. No. However, proposed orders are appreciated in civil matters. Unless it is a dispositive motion or a motion unlikely to be addressed without a hearing, the Court will not know that your motion exists. When a proposed order is attached, the file is brought to chambers.

- Q. Do you appreciate courtesy copies of briefs being delivered to your chambers prior to hearing on a motion? If so, how early would you like them?

- A. Yes, one copy is sufficient. When the brief is filed.

- Q. Do you schedule hearings on motions automatically upon receiving a request for setting, or do you prefer or require that counsel call to schedule hearings?

- A. Once a request for setting is sent, the JA will contact the parties to schedule the hearing.

Q. Under what circumstances do you decline to grant a request for oral argument?

A. I seldom deny requests for oral argument. I may set time limits if appropriate.

Q. Do you prefer that counsel provide copies of the relevant cases prior to a hearing?

A. It is helpful that they identify cases prior to the hearing (i.e. citations to them in motions and responses), but they do not need to provide copies of the cases prior to the hearing.

Q. Is there anything about the way you handle requests for temporary restraining orders and preliminary injunctions that you think the bar should be aware of?

A. No.

FINAL PRETRIAL CONFERENCE

Q. In your view, what is the purpose of a final pretrial conference?

A. To discuss procedures for the jury trial, address any issues that may come up during trial. I hear motions in limine or other outstanding motions at the final pretrial conference.

Q. Do you have a specific format for pretrial statements? If so, please provide a copy.

A. No.

Q. What steps do you take, if any, before the final pretrial conference to encourage settlement of the case? Do you require mediation?

A. I usually require mediation in divorce cases. Otherwise no.

JURY TRIAL PRACTICE

Jury Selection:

Q. How is voir dire conducted in your courtroom?

A. I handle jury trials the same way the other two judges in this district handle it. We select a certain number of people (depending on criminal or civil and 6 or 12 people) and they are questioned. If a juror is removed for cause, the clerk calls another jury from the remaining pool to fill their seat. Once voir dire is complete, the parties exercise their peremptory challenges and a jury is seated.

Q. Do you allow or encourage the use of jury questionnaires?

A. No. Only in rare circumstances will I consider the use of questionnaires.

Q. What is your due date for proposed jury questionnaires?

A. N/A.

Q. What do you prefer in regard to the length of the jury questionnaire?

A. N/A.

Requested Jury Instructions:

Q. When do you require requested jury instructions to be submitted?

A. I set the due date for jury instructions in my pretrial and criminal case management orders.

Q. What form do you prefer requested jury instructions to take (e.g. do you prefer jury instructions accompanied by supporting cases, etc.)?

A. The parties should follow the Wyoming pattern jury instructions. I prefer only cited instructions in hard copy and e-mail format.

Q. What is your view of the Wyoming Pattern Jury Instructions?

A. I rely heavily on the pattern instructions and will use them as my first source for instructions. If counsel is relying on instructions other than the pattern, citation to authority is required.

Q. Do you have a set of stock jury instructions that you use?

A. Yes. I use the standard introductory instructions in both criminal and civil cases. These are given to counsel before trial begins so that objections, if any, can be addressed before I read them at the beginning of the trial.

Q. Do you prefer to receive an electronic copy of requested jury instructions?

A. Yes.

Trial Procedures:

- Q. What is your preferred trial schedule (e.g. 9 to 5 with an hour for lunch, 8 to 2 with no lunch, etc.)?
- A. Criminal trials begin at 9:00 a.m. on the first day, civil trials at 9:30. I break at lunch for 1 ½ hours (maybe shorter depending on time). I break at 5:00 p.m. I also have mid-morning and afternoon breaks. After the first day, trial doesn't usually begin until 9:30 due to other morning hearings that need to be held.
- Q. What are your preferences with respect to motions in limine and other trial related motions?
- A. Any motions not previously argued will be held at the final pre-trial conference. I prefer motions in limine to be filed in criminal matters in a timely manner so that a hearing can be held prior to the trial and not while the jury is waiting.
- Q. What are your preferences and/or procedures related to witness scheduling?
- A. The parties should manage their own witnesses and have them ready and available at trial to be called without delaying the proceedings.
- Q. What are your preferences with respect to trial exhibits? Do you allow/require the use of exhibit notebooks for the court and jurors?
- A. I would allow the use of exhibit notebooks upon stipulation of the parties.
- Q. Do you find the use of computer-assisted presentations (e.g. PowerPoint) effective and/or useful?
- A. I think they can be if they are used correctly.
- Q. Do you permit "speaking objections" in jury trials?
- A. No, unless I ask for additional explanation.

BENCH TRIAL PRACTICE

- Q. What are the major differences in procedures in your courtroom between bench trials and jury trials?
- A. None.

Q. Do you appreciate or require trial briefs or proposed findings of fact and conclusions of law from counsel? Do you prefer proposed findings of fact and conclusions of law be submitted before or after trial or both?

A. Yes. I set a date in the scheduling order for submission of findings of fact and conclusions of law.

THOUGHTS ON EFFECTIVE ADVOCACY

Q. What makes an effective advocate in jury arguments?

A. Plain and concise arguments about the facts. Telling your client's story is more effective instead of just dry repetition of the testimony and the law.

Q. What makes an effective advocate in bench arguments?

A. The same as above.

Q. What are the most common mistakes made in argument?

A. Repetitive and rambling thoughts. Be mindful that the jury or the court has listened to the witnesses and so continual repetition of what the testimony elicited about is not effective.

Q. What are some techniques that do, or do not, work effectively in the examination of witnesses?

A. Rapid fire questions to a witness are not effective because a jury or the Court is processing answers to the previous questions. Asking a question that requires more than a yes or no answer and then interrupting the witness before they can finish their answer. Asking the same question two or three times and arguing with the witness is not effective.

CRIMINAL MATTERS

Q. How do you handle requests for continuance on pretrials, arraignments and trials?

A. I grant stipulated continuances generally and have hearings on those that are disputed.

Q. When may the issue of bail best be addressed in your courtroom?

A. Anytime there is a hearing or upon request.

Q. What information do you want from counsel at the time of sentencing?

A. I want to hear individualized arguments about the defendant and his/her particular circumstances and why the agreement proposed, or the sentence argued is just. I want to know what the victim's thoughts are on the disposition when there is no victim impact given. The State presumably has talked to them and should be prepared to at least comment on what their position is in the case.

Q. Are private pre-sentence evaluations useful or encouraged?

A. No.

Q. Do you have any standard sentences the bar should be advised about (i.e. DUI sentencings, acceptance of alcohol-related reckless)?

A. No.

SPECIAL ISSUES FOR DOMESTIC CASES

Q. Are there any special issues that arise in your courtroom in domestic cases of which you would like the bar to be aware?

A. No.

Q. What do you want to have on temporary order issues?

A. As a general rule I do not enter temporary orders. If there is a special circumstance, then counsel should present the issue and the requested relief by motion allowing the opposition time to respond.

- Q. Do you have a policy on child interviews with respect to custody?
- A. I do not prefer to do them. If counsel wishes to call the child witness, then counsel will question the child and I will follow up with questions if necessary
- Q. When do you require guardians ad litem? What do you expect from a guardian ad litem?
- A. I will appoint a GAL upon stipulation of the parties. The GAL should always act in the best interest of the child.

DISCOVERY PRACTICES

- Q. What is your approach to resolving discovery disputes?
- A. I believe that the parties should work diligently to resolve discovery disputes before asking the Court to intervene. Upon request I will set hearings and resolve the dispute.
- Q. What are your thoughts on imposing sanctions for discovery abuses?
- A. It may be necessary in some cases.
- Q. Are you generally available to solve problems that arise during a deposition?
- A. No

THOUGHTS ON COURTROOM PROTOCOL

- Q. Is lack of civility a recurring problem in your courtroom? What steps do you take to improve civility in your courtroom?
- A. No. If there is a problem, I will issue a verbal warning and if it continues sanctions pursuant to Rule 801 of the U.R.D.C. may be necessary.
- Q. What do you expect of lawyers (and their staff) in your courtroom? Clients? Witnesses?
- A. I expect them to follow rule 801 of the U.R.D.C.

Q. Do you impose any limitations on courtroom movement (approaching witness, podium, etc.)?

A. Counsel must ask to approach the bench or witness. Counsel can move the podium to a comfortable location, but they should stay close to it while arguing or examining a witness.

Q. What kind of lawyer conduct is unacceptable to you in your courtroom?

A. Counsel being rude to the court, witnesses or other parties is unacceptable. Rule 801 and the Code of Professional Conduct should be followed at all times.

OTHER MISCELLANEOUS ISSUES

Q. What are your opinions regarding courtroom dress?

A. Counsel should dress in professional attire.

Q. Do you allow children in your courtroom?

A. Yes, but they may be asked to leave if they are distracting the proceedings.

Q. Do you allow cell phones in your courtroom?

A. The public cannot bring phones into the building. Attorneys are allowed to bring in phones so that they may schedule hearings.

Q. What, if anything, do you do to enforce promptness in your courtroom?

A. I will address it with the attorney to see what the cause is. I start court on time and expect counsel to be there on time.

CLERK'S/ADMINISTRATIVE ASSISTANT'S COMMENTS

- Q. What do you expect of attorneys in their dealings with you?
- A. Professionalism, courtesy and candor. Returning calls or emails in a timely manner and be prepared to discuss dates they are available for hearings. Notify the JA immediately if a matter is resolved or if a hearing can be vacated.
- Q. What do you expect of attorneys in regarding to scheduling hearings?
- A. Schedule the amount of time they realistically need. The Court tries to accommodate parties with the time they need to present their case. The JA attempts to schedule hearings that are convenient to both the Court and counsel so flexibility in scheduling is beneficial to everyone
- Q. What is your protocol for scheduling hearings?
- A. Send a request for hearing to the JA and she will contact counsel to set hearings.
- Q. What can attorneys do to improve communications with you?
- A. Attorneys should realize that the JA deals with many people throughout the day and patience and courtesy go a long way in getting things timely accomplished. If attorneys need to communicate with me communicate that to the JA.
- Q. What would you like attorneys to keep in mind?
- A. That the docket is extremely busy, so please timely advise the Court when cases settle. Try to settle sooner rather than later so that time can be allocated to those cases that cannot be resolved. We make every effort to schedule hearings as soon as possible and if a hearing is resolved in a timely manner, we may be able to use that time for another hearing.
- Q. What size paper does your judge prefer or require for pleadings and briefs?
- A. Follow the URDC rules.